

**COMMENT SUMMARY AND RESPONSES**  
**LOS ANGELES REGION CONDITIONAL WAIVER FOR IRRIGATED LANDS**  
**& SANTA CLARA RIVER ESTUARY TOXAPHENE TMDL**

<b>List of Public Review Comment Letters</b>
1. Ventura County Agricultural Irrigated Lands Group
2. Ventura County Agricultural Association
3. Heal the Bay
4. Ventura Coastkeeper
5. US EPA, Region 9
6. E-mail from Dan Detmer, United Water Conservation District

<b>Number</b>	<b>Date</b>	<b>Comment</b>	<b>Response</b>
<b>1</b>	<b>Sept. 6, 2010</b>	<b>Ventura County Agricultural Irrigated Lands Group</b>	
1.1		The Ventura County Agricultural Irrigated Lands Group (VCAILG) appreciates the opportunity to comment on the proposed Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands. VCAILG is a discharger group formed to comply with the current Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands (Conditional Ag Waiver) (Order No. R4-2005-0080). Currently, VCAILG membership includes 1,387 landowners and farms spanning 83,587 irrigated acres across Ventura County. Since its formation, VCAILG has complied with all aspects of the Conditional Ag Waiver program, successfully completing the required monitoring, filing reports, and implementing a Water Quality Management Plan to address water quality	Comment noted.

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		benchmark exceedances. VCAILG has also supported implementation of TMDLs in which agriculture is named as a responsible party by coordinating agricultural dischargers' compliance activities.	
1.2		<p>Overall, VCAILG is supportive of the proposed Conditional Ag Waiver and appreciates the efforts of Regional Board Staff to continue implementing a program which provides flexibility and avoids duplicative regulatory requirements while improving water quality. Comments regarding the proposed Conditional Ag Waiver can be divided into the following categories:</p> <ol style="list-style-type: none"> <li>1. Clarifications regarding the intent of the Conditional Ag Waiver and the process of implementation.</li> <li>2. Minor grammatical and formatting recommendations to improve readability throughout the Order and Appendix 1, Monitoring and Reporting Requirements.</li> <li>3. Recommended changes to Appendix 1, Monitoring and Reporting Requirements</li> <li>4. Corrections to Appendix 2, Standard Water Quality Benchmarks.</li> <li>5. Comments regarding the Total Maximum Daily Load (TMDL) for Toxaphene for the Santa Clara River (SCR) Estuary.</li> </ol>	Comment noted. See responses to comments below.
1.3		<p><b>Purpose of Order, page 1, #1.</b>  <b>Add text shown below to clarify that the intent of the Conditional Ag Waiver program is to apply an</b></p>	This finding has been revised to clarify and outline the overall approach of the Conditional Waiver for Irrigated Lands Program.

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		<p><b>iterative approach to the attainment of benchmarks.</b></p> <p>This Order regulates Discharges from Irrigated Agricultural Lands in a manner that is intended to attain Benchmarks by requiring a quantitative assessment of the water quality impacts of Discharges and, when necessary to achieve Benchmarks, the implementation of reasonable on-farm management practices.</p>	
1.4		<p><b>Purpose of Order, page 1, #4. Replace the last sentence with the text below to reflect that pesticides and nitrogen and phosphorus are three types of compounds and biostimulatory compounds or fertilizers better reflect the water quality impairments.</b></p> <p>Two categories of Wastes frequently reported in agricultural discharges that impair waters of the state in the Los Angeles Region are pesticides and biostimulatory compounds.</p>	<p>This finding has been revised to refer to nitrogen and phosphorus compounds as biostimulatory substances. This is consistent with the Basin Plan water quality objective which refers to nitrogen and phosphorus as biostimulatory substances.</p>
1.5		<p><b>Purpose of Order, page 1, #6. The listed requirements of the Conditional Ag Waiver do not reflect the iterative process of the program and logical order of that process. Text following “in part,” should be stricken and replaced with the following:</b></p> <p>(1) Prepare monitoring plans, conduct monitoring, and report annually on monitoring results including the identification of Water Quality Benchmark exceedances; (2) develop, as required, a water quality</p>	<p>This finding has been revised to clarify and present waiver requirements in the order they are required to be conducted.</p>

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		management plan (WQMP) to attain Benchmarks through the identification and implementation of agricultural management practices; and, (3) assess the effectiveness of implemented agricultural management practices in attaining Benchmarks and, when necessary to attain Benchmarks, identify, implement, or upgrade management practices.	
1.6		<p><b>Definitions, page 2, #12.</b>  <b>Revise the definition of “Waste.”</b></p> <p>The definition of the term Waste should be revised to better reflect its meaning in the context of irrigated agricultural lands.</p>	The term “waste” is defined by the California Water Code (section 13050 (d)). This definition is applicable to all discharges regulated under the California Water Code, including discharges from irrigated agricultural lands.
1.7		<p><b>Definitions, page 3.</b>  <b>A 14<sup>th</sup> definition should be added as a provision to provide default definitions for terms in the Conditional Ag Waiver that are not specifically defined. Recommended text is provided below.</b></p> <p>Unless otherwise specified above, all other terms used in this Order shall have the same definition as that set forth in the California Water code Division 7.</p>	Staff agrees. A finding been added to the Definitions section of the Order.
1.8		<p><b>Legal and Regulatory Considerations, page 3, #14.</b>  <b>Number 14 should be stricken and replaced with the following text to correct and clarify the Regional Board’s authority to regulate waste discharges.</b></p> <p>Water Code section 13260(a)(1) requires that any person discharging Waste or proposing to Discharge Waste within the Regional Board’s jurisdiction that could affect the quality of the Waters of</p>	This finding was revised to clarify the Regional Board’s authority by referencing specific Water Code sections.

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		<p>the State, shall file a Report of Waste Discharge (ROWD) with the Regional Board. The Regional Board may, in its discretion, issue Waste Discharge Requirements (WDRs) pursuant to the Water Code section 13263(a). Water Code section 13269 authorizes the Regional Board to waive the provisions of Water Code sections 13260(a)(1) and 13263(a).</p>	
1.9		<p><b>Legal and Regulatory Considerations, page 4, #21. Remove redundant language regarding compliance as shown below.</b></p> <p>Section F – Water Quality Benchmarks and Appendices 2 and 3 of this Order identify specific water quality objectives, prohibitions, and load allocations and water quality criteria, which <del>the Dischargers are required to attain in compliance with the conditions of this Order, the Water Quality Benchmarks will be used to assess the effect...</del></p>	<p>This finding has been revised for clarification and to remove redundant language.</p>
1.10		<p><b>Legal and Regulatory Considerations, page 4, #22. This section should be revised to clarify the underlying policy of the Conditional Ag Waiver program by emphasizing the iterative process. Additionally, language regarding other regulatory options should be moved to Order Section I. Termination.</b></p> <p>Replace the text in #22 with the following (revised text shown in <b>bold</b>): The intent of this Order is to <b>establish an alternative regulatory program for Irrigated Agricultural Lands that requires Dischargers to attain Water Quality Benchmarks through an</b></p>	<p>This finding has been revised to clarify the intent and approach of the Conditional Waiver for Irrigated Lands Program.</p>

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		<p><b>iterative process that quantitatively assesses the in-stream, water quality impacts of Discharges and, when necessary to achieve Benchmarks, requires Dischargers to implement on-farm management practices.</b> Where a Discharger is determined to be causing or contributing to exceedances of Benchmarks, this Order requires the Discharger or Discharger Group to identify and implement or upgrade management practices to attain the Benchmarks.</p>	
1.11		<p><b>The following language regarding other regulatory options should be considered for insertion in Order Section I. Termination on page 21, following #20.</b></p> <p>Individual Dischargers and members of a Discharger Group will not be required to file ROWDs or be subject to WDRs during the term of this Conditional Waiver. However, where a Discharger refuses to comply with the conditions set forth in this Order or Discharges Waste not normally associated with Discharges from Irrigated Agricultural Lands, the Regional Board may consider imposing upon that Discharger more restrictive requirements that could be set forth, if necessary, in a WDR.</p>	<p>A finding (# 5) stating that Dischargers in compliance with this Order are not required to file an ROWD has been inserted into Section H (Compliance and Enforcement) of the Order.</p>
1.12		<p><b>Legal and Regulatory Considerations, page 5, #24 This paragraph does not reflect the order of actions equating to compliance with the</b></p>	<p>See Response 1.5</p>

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		<p><b>Conditional Ag Waiver. The second sentence should be reordered as follows.</b></p> <p>This Order, appendices, and attachments require a Discharger who obtains coverage under the Conditional Waiver to comply with applicable water quality beneficial uses, and prevent nuisance by <del>identifying, implementing and evaluating management practices and implementing monitoring and reporting programs</del> <b>and management practices</b> to attain water quality benchmarks.</p>	
1.13		<p><b>Legal and Regulatory Considerations, page 6, #28. The last two sentences of the paragraph impose liability on the Discharger in those instances where the Discharger cannot possibly comply with both the Order and applicable ESAs. For example, the management practices required to comply with the Order may result in a “take” that state and federal agencies refuse to authorize. The policy and legal issues related to integrating the goals and objectives of Porter-Cologne and the CWA with the California and federal ESAs are complex, and should not be handled by imposing a Hobson’s Choice on the Discharger. We recommend that the last two sentences of the paragraph be removed.</b></p>	<p>It is not the intent of this finding to create a potential regulatory conflict with the Endangered Species Act. The last two sentences of this finding have been struck.</p>
1.14		<p><b>Rationale for Conditional Waiver, page 9, #34. The last sentence of this paragraph should be clarified to require additional monitoring, if</b></p>	<p>The change was made to this finding.</p>

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		<p><b>necessary, to meet water quality benchmarks.</b></p> <p>The WQMP requires improved management practices and additional monitoring, <b>if necessary</b>, to achieve and document compliance with water quality benchmarks.</p>	
1.15		<p><b>Rationale for Conditional Waiver, page 9, #36. The last two sentences of this paragraph should be clarified to include due process requirements.</b></p> <p><del>The Regional Board will consider reasonable and appropriate bases for the adoption of individual or general WDRs, where necessary, in the future. Coverage under this Order may be terminated at any time and the Executive Officer may require any person to submit an ROWD and seek individual waste discharge requirements.</del> <b>With reasonable notice and opportunity to be heard, a Discharger or Discharger Group's coverage under this Order may be terminated at any time. Upon termination of coverage, the Regional Board may require that Discharger or Discharger Group to submit an ROWD and may issue the terminated Discharger(s) an individual or group WDR.</b></p>	This change was made to the finding.
1.16		<b>Scope and Description of Conditional Waiver, page 10, following #46. Consider inserting language that addresses the complexities and factors involved in</b>	Staff agree that the success of this Order is based on a myriad of factors and effectiveness should be evaluated in a comprehensive manner.

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		<p><b>assessing effectiveness under the Conditional Waiver program and the meaning of the term “improvement” in the assessment process.</b></p> <p>The conditions of this Conditional Waiver will require actions that aim to protect water quality and beneficial uses. The conditions of this Waiver, however, will require actions that will lead to achieving water quality benchmarks. The Regional Board further recognizes that, although management practices implemented during the period of this Conditional Waiver will likely result in improved water quality, those improvements may not be measurable until after that period expires. Therefore, in assessing the effectiveness of this Conditional Waiver, the Regional Board will consider all improvements resulting from this Conditional Waiver, including, without limitation, improved monitoring and testing, improved management practices and improved water quality. In addition, in assessing the effectiveness of this Conditional Waiver, the Regional Board may consider other factors, including, without limitation, the level of participation and cooperation of Dischargers as well as the total cost of Discharger compliance relative to need and benefit.</p>	<p>A finding (# 50) has been inserted describing the factors that will be considered when reviewing the effectiveness of this Order.</p>
1.17		<p><b>D. General Provisions, page 16. Compliance language from the current Conditional Waiver should be restored as #1 of this section as follows.</b></p> <p>Compliance with this Order shall constitute compliance with applicable Basin Plan provisions and water quality objectives governing protection of receiving waters</p>	<p>Language has been inserted under D.1 of the General Provisions to clarify that dischargers must comply with water quality benchmarks and to explain the process for dischargers to comply with water quality benchmarks.</p>

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1.18		<p>from nonpoint source discharges.</p> <p><b>D. General Provisions, page 17, #4.</b>  <b>There is a need to clarify the Regional Board’s inspection powers for those regulated under the Conditional Waiver. The current language is repetitious in that 4(a) lists authorized actions Regional Board representatives may take and repeats them again in 4(b, c, and d). The recommended language below clarifies procedures related to the Regional Board’s statutory right to inspect and mirrors the requirements of Civil Code 1822.5.</b></p> <p>To the extent authorized by, and in accordance with, Water code section 13267, the Regional Board is authorized to inspect private property owned or occupied by any Discharger for the purpose of determining compliance with the provisions of this Order. Except in emergency situations that pose a threat to public health, safety and property, no authorized official of the Regional Board may enter private property owned or occupied by a Discharger without providing that Discharger at least twenty-four (24) hours’ written notice of the authorized official’s intention to inspect. The written notice transmitted shall state that the person has the right to refuse entry and that, in the event such entry is refused, inspection may be made only upon issuance of an inspection warrant by a duly authorized magistrate pursuant to Code of Civil Procedure Section 1822.50. In the event that consent to enter private property is withheld by any Discharger after such request has been made by the</p>	<p>Staff agrees that clarification of this section is appropriate. Water Code section 13267 does not require that the Water Board provide 24 hours or written notice to conduct an inspection nor to obtain written permission. Pursuant to Water Code section 13267, the Water Board may inspect the premises upon the consent of the owner or possessor of the facilities or, if consent is withheld, with a duly issued warrant issued pursuant o Civil Code section 1822.50. The section will be revised as follows:</p> <p>To the extent authorized by, and in accordance with, Water Code section 13267, the Regional Board is authorized to inspect upon reasonable notice private property owned or occupied by any Discharger for the purpose of determining compliance with the provisions of this Order. Except in emergency situations that pose a threat to public health, safety and property, no authorized official of the Regional Board may enter private property owned or occupied by a Discharger except upon consent of the owner or possessor of the facilities or, if consent is withheld, with a warrant issued pursuant to Civil Code section 1822.50.</p> <p>In the course of a duly authorized inspection, the Regional Board may;</p> <p>a. upon reasonable notice enter upon the</p>

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		<p>Regional Board, the Regional Board may seek assistance from any court competent jurisdiction in obtaining an inspection warrant for such entry pursuant to the procedures set forth in Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure. In the course of a duly authorized inspection, the Regional Board may;</p> <p>a. enter upon the Discharger’s premises where a regulated operation or activity is located or conducted;</p> <p>b. inspect or photograph any operation or activity pertinent to this Order;</p> <p>c. have access to and copy any records pertinent to this Order; and</p> <p>d. sample or monitor to determine compliance with this Order.</p>	<p>Discharger’s premises where a regulated operation or activity is located or conducted or where records must be kept under conditions of this Order;</p> <p>b. inspect or photograph any operation or activity (including monitoring and control equipment) pertinent to this Order;</p> <p>c. have access to and copy any records pertinent to this Order; and</p> <p>d. sample or monitor to determine compliance with this Order, or as otherwise authorized by the Water Code, any substances or parameters.</p> <p>e. without notice enter upon the discharger’s premises in the event of an emergency affecting the public health or safety.</p>
1.19		<p><b>E. Specific Provisions, page 18, #2.</b>  <b>This paragraph should be revised as follows to reflect the order in which actions will take place to comply with this Conditional Waiver:</b></p> <p>If the monitoring results demonstrate an exceedance of a Water Quality Benchmark, including load allocations, then the Individual Discharger or Discharger Group shall, <b>in accordance with an approved WQMP</b>, implement targeted management practices <del>on site in accordance with a WQMP</del> intended to attain Water Quality Benchmarks, including</p>	<p>This finding has been revised to clarify and present waiver requirements in the order they are required to be conducted.</p>

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1.20		<p>load allocations.</p> <p><b>H. Compliance and Enforcement, page 20, #3. The changes shown below are recommended to better describe the Conditional Waiver implementation process and the order of actions required by Individual Dischargers and Discharger Group members.</b></p> <p>The conditions of this Order require the identification and implementation of targeted actions that will lead to achieving Water Quality Benchmarks. To satisfy the conditions of this Order, the <b>an Individual Discharger or Discharger Group</b> must submit technical reports <b>and</b>, conduct required monitoring programs. <b>In addition to the foregoing, a Discharger must, where necessary to attain Benchmarks</b>, implement management practices, evaluate the effectiveness of <b>those</b> management practices, <b>and</b> refine <b>those</b> management practices to improve their effectiveness. <del>As necessary to achieve water quality benchmarks, protect against pollution and nuisance, and protect the beneficial uses of waters of the state.</del></p>	<p>This finding has been revised to clarify and present waiver requirements in the order they are required to be conducted.</p>
1.21		<p><b>H. Compliance and Enforcement, page 20, #4. Language regarding the issuance of WDRs is redundant and covered appropriately in the Termination section and should be stricken, additionally the revised text below includes due process language providing opportunity for Regional Board review and clarifies that Conditional Waiver termination is applicable to those Dischargers failing to meet the conditions of</b></p>	<p>The language in section H is necessary because it addresses termination of the waiver due to Discharger noncompliance, whereas the language in Section I addresses the Regional Board's ability to terminate the waiver for other reasons. These are different circumstances for termination and are appropriately addressed by different sections and findings in the Order.</p>

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		<p><b>the Order.</b></p> <p>If an Individual Discharger or participant of a Discharger Group fails to meet the requirements and conditions of this Order, the Executive Officer may, <b>upon providing the Discharger with reasonable notice and an opportunity to be heard before the Regional Board, terminate the Discharger’s right to coverage under this Conditional Waiver</b> terminate the Waiver and require the Discharger to submit a ROWD. Prior to issuance of waste discharge requirements, the Discharger may request that the Regional Board not terminate the waiver, but must provide documentation regarding extenuating circumstances to the Regional Board to consider prior to issuance of waste discharge requirements.</p>	<p>Prior to the termination of enrollment under this Order a Discharger may present information for consideration by the Regional Board Executive Officer.</p> <p>This finding has been revised for clarification.</p>
1.22		<p><b>I. Termination, page 21, #20.</b>  <b>This paragraph should be revised as follows to add due process requirements for notice and opportunity to be heard before the Regional Board.</b></p> <p>The Los Angeles Regional Board may review this Order at any time and may modify or terminate the Conditional Waiver in its entirety. <b>Upon providing a Discharger or Discharger Group with reasonable notice and opportunity to be heard before the Regional Board,</b> the Executive Officer may terminate applicability of the Conditional Waiver with respect to an <b>that</b> Individual Discharger or Discharger Group upon notice to the Individual Discharger or Discharger Group.</p>	See response to comment 1.21
1.23		<b>Throughout the document the terms “irrigated</b>	Comment noted. The term “irrigated agriculture

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		<b>lands” and “irrigated agriculture lands” are used interchangeably. For consistency, please consider using the term “Irrigated Agricultural Lands” throughout the Conditional Waiver.</b>	lands” is used in the Order.
1.24		<b>Definitions, page 2. To improve the clarity and flow of the Conditional Waiver documents, please alphabetize the definitions and capitalize defined terms throughout the documents.</b>	Comment noted. Terms in the Definition section were alphabetized. Defined terms were not capitalized.
1.25		<b>Definitions, page 2. It is recommended that the following terms be added to the list of definitions.</b>  Discharger (include landowner and operator) Discharger Group Individual Discharger Conditional Waiver New Discharges	Comment noted. Terms requiring a definition were added to the Definitions section of the Order.
1.26		<b>Scope and Description of Conditional Waiver, page 11, #53. This description of a Discharger Group is more appropriate in the Definitions section.</b>	Comment noted. Discharger Group is now defined in the Definitions section of the Order.
1.27		<b>This is a defined term in the Definitions section and does not need to be repeated.</b>	Comment noted. The definition of Water Quality Benchmark is no longer repeated in Section F.
1.28		<b>Appendix 1, Monitoring Constituents, page 4, Table 1. Trash monitoring requirement.</b>  Gathering information regarding the presence or absence of trash at agricultural monitoring sites, will not provide useful information for assessing trash impacts or discharges from agricultural areas. Many	In response to this comment the reporting unit for trash data has been changed to “observations” (see Table 1 of Appendix 1). This new reporting unit of “observations” directs monitoring results to be reported in a more descriptive format and may include specific site information such as nearby land uses and potential sources of trash.

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		<p>agricultural monitoring sites are located in areas that not only drain agricultural lands, but also provide safe and easy access. Therefore, many sites are located alongside roads, highways, railroad tracks, or beneath overpasses where trash from these sources is co-mingled. Additionally, the presence or absence of trash does not provide information on the potential impacts of the trash or types of trash present that is consistent with information being generated under trash TMDL monitoring. Gathering presence/absence of trash information does not provide a method for evaluating the information gathered and can not be considered in the same way as information generated under more comprehensive trash monitoring programs. Consequently we request that the trash monitoring requirement be removed for areas where a trash TMDL is not being implemented.</p>	<p>Additionally, source identification of trash could be conducted under the WQMP, if necessary.</p>
1.29		<p><b>Appendix 1, Water Quality Management Plan, page 7.</b>  <b>The first sentence of this paragraph should be revised to reflect the Conditional Waiver implementation process and the order of actions required by Dischargers.</b></p> <p>If water quality monitoring data, collected as described above, indicate exceedances of applicable water quality benchmarks, the Dischargers shall <b>develop a WQMP and, upon approval of and in accordance with said WQMP</b>, implement <b>targeted</b> management practices <del>on site in accordance with a WQMP</del> <b>intended</b> to attain water quality benchmarks.</p>	<p>This finding has been revised to clarify and present waiver requirements in the order they are required to be conducted.</p>
1.30		<p><b>Appendix 1, Elements of a Water Quality</b></p>	<p>Staff disagrees. This language does not explicitly</p>

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		<p><b>Management Plan, page 8, Assessment of Existing Conditions bullet 5. Strike the words, “which may include edge of field monitoring.”</b></p> <p>Follow-up monitoring is important for source tracking; however, edge of field monitoring should not be specifically listed as a part of that investigative process. Including edge of field monitoring as a provision in assessing existing water quality conditions nullifies one of the most important aspects of the option to comply with the Conditional Waiver as part of a Discharger Group.</p>	<p>require edge of field monitoring as part of the WQMP, but states that it <i>may</i> [emphasis added] be included as part of follow up monitoring , if needed. As the Conditional Waiver program continues to develop with additional BMP implementation and ongoing monitoring it may be necessary to investigate Water Quality Benchmark exceedances with more detailed follow up monitoring. Language has been added clarifying that edge of field monitoring is at the discretion of the discharger.</p>
1.31		<p><b>Appendix 1, Elements of a Water Quality Management Plan, page 8, Proposed Onsite and/or Subwatershed Modifications bullet 2, in the second sentence, replace the word “will” with “may.”</b></p> <p>Management practices implemented to address water quality benchmark exceedances will be chosen by the landowners and growers based on specific site conditions, cost, and other factors. Rather than prescribing specific practices it is better to allow flexibility for agricultural operators to make choices based on their professional experience, and to change management practices that may be proven ineffective in some instances.</p>	<p>The WQMP does not prescribe specific management practices to be implemented. However, it does require agricultural operators, as part of the WQMP, to report their selected management practices to address Water Quality Benchmark exceedances. Agricultural operators do have the flexibility to choose and adjust management practices based on their professional experience and site specific conditions.</p> <p>This change was not made to Appendix 1. However, language was added clarifying that BMP locations in the WQMP will be general.</p>
1.32		<p><b>Appendix 1, Elements of a Water Quality Management Plan, page 9, Proposed Onsite and/or Subwatershed Modifications, fourth bullet on this</b></p>	<p>Staff finds that this bullet is not redundant. It is necessary to include in the WQMP an overall approach to determine and report upon effective</p>

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		<p><b>page, should be stricken.</b></p> <p>This bullet regarding the effectiveness of management practices and follow-up monitoring is redundant.</p>	management practices.
1.33		<p><b>Other Reporting Requirements, page 12, #2. This requirement should be modified to clarify that the requirement only applies to monitoring at the MRP locations as follows:</b></p> <p>If Dischargers monitor any constituent <b>at the monitoring locations established in the MRP</b> more frequently than required by the Conditional Waiver, the Discharger shall submit the monitoring results to the Regional Board.</p> <p>The requirement to report all monitoring results to the Regional Board would lead to redundancy in reporting and eliminates the right of Dischargers to privately monitor their lands independent of the Conditional Waiver program. For example, Dischargers would have to submit testing results for food safety or other programs to multiple agencies. By limiting the requirement to monitoring locations established in the MRP, all data collected at locations established for evaluating the Conditional Ag Waiver are required to be submitted, but other data collected for other purposes and reported to other agencies is not required to be submitted.</p>	This change has been made to Appendix 1.
1.34		<p><b>Many of the benchmarks listed as “Daily Maximum/Instantaneous” actually have averaging periods.</b></p>	The Water Quality Benchmarks table in Appendix 2 has been revised. The heading of column three has been changed to “Water Quality Benchmark”.

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		<p>We recommend changing the table heading from “Daily Maximum/Instantaneous” to “Benchmarks” and inserting an additional column defining whether a particular benchmark is a daily maximum /instantaneous or contains an averaging period, such as the 30-day average objective as for the organochlorine pesticides and ammonia.</p>	<p>The averaging period for individual benchmarks, if any, is specified in the Bain Plan or applicable TMDLs.</p>
1.35		<p><b>Appendix 3, page 8, the compliance date for the Santa Clara River Estuary Toxaphene TMDL should be explained.</b></p> <p>Though the targets for toxaphene in the Santa Clara River Estuary are being incorporated into the Conditional Waiver as benchmarks, having an immediately effective compliance date is contrary to typical TMDL implementation schedules and may be confusing to Dischargers. The compliance date should be explained with a footnote, such as the following language from the Staff Report in Section 6.2, page 38, stating that,</p> <p><i>“Within ten years of the effective date of the revised Conditional Waiver, if concentrations in tissue are not attenuating, such that it appears that numeric targets will be achieved within 15 years, the Regional Board will reconsider the TMDL.”</i></p>	<p>A footnote has been added to Appendix 3 explaining the use of fish tissue trend monitoring to evaluate TMDL effectiveness.</p>
1.36		<p><b>Appendix 3, page 8, the allocation for toxaphene in water for the Santa Clara River Estuary Toxaphene TMDL should be linked to the human health</b></p>	<p>The TMDL staff report has been revised to include a numeric target and load allocation for toxaphene in sediment based on the threshold effects level</p>

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		<p><b>objective for toxaphene rather than the aquatic life criteria.</b></p> <p>Although we recognize the justification for using the aquatic life toxaphene criteria as a numeric target in the TMDL, the load allocations for agricultural dischargers should be set equal to the human health CTR objective for organisms only. As discussed in the staff report, water column samples have not demonstrated an impairment and toxaphene in water is not being addressed by this TMDL. Instead, the TMDL was written to address observed impairments in fish tissue and ensure water column impairments do not occur. As a result, the load allocation should be linked as directly as possible to the water column concentration likely to cause a fish tissue impairment. Ideally, we would request that a bioaccumulative model be developed to determine the appropriate water column allocation that would result in achieving the fish tissue targets in the TMDL. However, since this information is not available, the human health CTR objective for organisms only should be used as the water column allocation. The human health CTR objective for organisms only represents the estimated water column concentration that could impact human health through consumption of contaminated fish tissue. The OEHHA values chosen as the numeric targets for the TMDL are also based on protecting human health from consumption of contaminated fish tissue. Although not directly related, the CTR human health objectives represent a better link than the aquatic life criteria.</p>	<p>(TEL) for toxaphene in marine sediment listed in the 2008 National Oceanic Atmospheric Administration (NOAA) Screening Quick Reference Tables. Staff did not develop a bioaccumulative model to determine the sediment allocation that would result in achieving fish tissue targets, but based on a review of the physical and chemical properties of toxaphene, it is expected that a load allocation based on the TEL will result in attainment of the fish tissue target. The sediment load allocation for toxaphene replaces the water load allocation for toxaphene in the publicly noticed draft TMDL. The chemical properties of toxaphene are such that it strongly binds to sediment particles; thus, a sediment load allocation is the best method to ensure attainment of the TMDL. This approach is consistent with previous TMDLs addressing toxic chemicals like toxaphene.</p> <p>The Regional Board may at any time reconsider the TMDL should additional information on the relationship between water quality and fish tissue concentrations become available that would support revised load allocations.</p>

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		<p>We also request that the TMDL acknowledge that should additional information be developed that provides better information to describe the relationship between water quality and fish tissue concentrations, the water column allocations could be revised to reflect the new information.</p>	
1.37		<p><b>TMDL for Toxaphene for the Santa Clara River Estuary Staff Report, Section 7 Monitoring, page 38, the water column monitoring requirements for toxaphene in water for the Santa Clara River Estuary Toxaphene TMDL should be adjusted to link directly to fish tissue monitoring.</b></p> <p>The monitoring requirements in this TMDL for toxaphene, dieldrin, and chlordane in water are substantial and costly. Two additional sites monitored four times per year for legacy constituents is not an effective allocation of resources. The TMDL staff report acknowledges that toxaphene, dieldrin, and chlordane are rarely detected in water column samples and that there are not sufficient exceedances to justify a water column listing for the Estuary. Although it is possible that improved detections in the future may improve the ability to detect these constituents in water samples, the available analysis techniques do not result in sufficient detections to justify the additional cost of the monitoring, especially given the lack of water column impairments. Additionally, water concentrations of the previously mentioned legacy pesticides are not going to vary significantly within a given year. These pesticides are not being applied in the environment, so there are no</p>	<p>The frequency of water column monitoring described in the staff report is necessary to identify the agricultural drains that cause the fish tissue impairment in the Estuary and to trigger the implementation of BMPs to address the source. Potential sources of toxaphene may be overlooked if the frequency of water column monitoring is too low. There were two detections of toxaphene in eight water column samples collected from agricultural drains/tributaries in the TMDL area by the Irrigated Lands Conditional Waiver monitoring program, suggesting that toxaphene is commonly detected in water and sufficient water column monitoring is necessary to identify potential sources.</p> <p>While legacy pesticides are not currently applied, they are bound to soils in the subwatershed. The amount of soil that is eroded and washed off to the Estuary varies with rainfall, hydrology, and shifting agricultural practices in the subwatershed; therefore, the concentrations of the legacy pesticides discharged to the Estuary can vary as well. The proposed monitoring frequency is needed to capture this variability.</p>

Number	Date	Comment	Response
		<p>new sources. Natural degradation and the implementation of BMPs to minimize transport of legacy pesticide residues are all processes that take time to translate into detectable changes in water quality, making frequent sampling an ineffective use of time and resources.</p> <p>Consequently, we recommend that the two new sites chosen to determine compliance with the Santa Clara River Estuary Toxaphene TMDL be monitored during one wet and one dry event during the same years as the fish tissue samples are collected so that the water and fish tissue data may be correlated. This will allow the evaluation of compliance with the load allocations in the context of the fish tissue data, which represents the impairment being addressed by the TMDL.</p>	<p>It should be noted that the TMDL does not require two additional monitoring sites. There are sites located in the TMDL area that are already sampled under the Conditional Waiver program (SO2T_ELLS and SO2T_TODD). Either of these sites could be used for the TMDL compliance monitoring site above Victoria Boulevard/below the Freeman Diversion. The TMDL only requires one additional monitoring site below Victoria Boulevard near the Estuary.</p>
<b>2</b>	<b>Sept. 2, 2010</b>	<b>Ventura County Agricultural Association</b>	
2.1		<p>The Ventura County Agricultural Associations represents the interests of over 110 major growers and shippers of agricultural commodities located in Ventura County. Its membership includes the following commodities: strawberries, nursery stock, citrus, celery, row crop vegetables, avocados, raspberries, cut flowers, bell and jalapeno peppers, cabbage, green onions, cilantro, carrots, broccoli, beans, lettuce, and a variety of other fruits and vegetables. All of these crops are grown on irrigated lands subject to the Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands.</p>	<p>Comment noted.</p>

Number	Date	Comment	Response
		Members of our Association have voluntarily participated in the foregoing program under the auspices of the Ventura County Agricultural Irrigated Lands Group (VCAILG) of which I serve as an Executive Committee member.	
2.2		I have reviewed the comments of VCAILG contained in a letter dated September 6, 2010, from Mr. Edgar Terry, the Steering Committee Chairman of the Ventura County Agricultural Irrigated Lands Group. VCAA incorporates by reference those comments and lends its support to the continued implementation of the program.	Comment noted. See responses to comments 1.1 – 1.37.
<b>3</b>	<b>Sept. 7, 2010</b>	<b>Heal the Bay</b>	
3.1		On behalf of Heal the Bay, we submit the following comments on the <i>Draft Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands within the Los Angeles Region</i> (“Draft Waiver”), <i>Draft Monitoring and Reporting Requirements</i> (“Draft MRR”), and <i>Draft Total Maximum Daily Load for Toxaphene for the Santa Clara Estuary</i> (“Draft TMDL”). Heal the Bay is a non-profit organization with over 13,000 members dedicated to protecting the ocean and local watersheds for people and marine life. We appreciate the opportunity to provide these comments.	Comment noted
3.2		We support several components of the Draft Waiver. For instance, we support that this waiver includes wet and dry weather and that the waiver aims to include agricultural load allocations from TMDLs throughout the region. In addition, we support the proposed Draft MRR’s required monitoring of pyrethroids and toxicity.	Comment noted

Number	Date	Comment	Response
		<p>The inclusion of monitoring for pyrethroids is critical, as these compounds are commonly found in agricultural pesticides and are considered contaminants of emerging concern (CECs). Pyrethroids have been found to be the predominant source of toxicity in sediments in certain areas of our region. Particularly, recent work by SCCWRP and the City of Los Angeles demonstrated that the predominant source of the toxicity in Ballona Creek sediments was pyrethroids. Concern over the impacts of pyrethroids is growing as use of these pesticides is on the rise as a replacement for organophosphates and organochlorides. The toxicity monitoring requirement is important to catch the impacts of this as well as other emerging contaminants.</p>	
3.3		<p>Despite these positive aspects, we are very concerned that the Draft Waiver contains unenforceable benchmarks instead of enforceable effluent limitations, especially for TMDL load allocations. We are concerned that the Draft Conditional Waiver may be utilized more as a mechanism to avoid responsibility under the CWA and Basin Plan, including Load Allocations under various TMDLs for impaired waterbodies in the Region, than an effective tool for characterizing the impacts of discharges from irrigated lands. We are certain that this is not the intent of the Regional Board. We outline this and other concerns regarding the Draft Waiver, Draft MRR, and Draft TMDL below.</p>	<p>Comment noted. See responses below.</p>
3.4		<p><b>The Draft Waiver should include enforceable effluent limitations instead of weak “benchmarks”</b></p>	<p>Finding 23 states that the Conditional Waiver requires compliance with water quality objectives, prohibitions, and TMDLs set forth in the Regional</p>

Number	Date	Comment	Response
		<p>The biggest problem we see with the Draft Waiver is the use of weak “benchmarks” instead of enforceable effluent limits, especially for TMDL load allocations. The Draft Waiver states that it requires compliance with water quality objectives, prohibitions, and TMDLs; however, the inclusion of benchmarks appears to conflict with this statement. The Draft Waiver states “Where a Discharger is causing or contributing to exceedances of water quality benchmarks, this Order requires the Discharger or Discharger Group to identify and implement or upgrade management practices to attain the water quality benchmarks in waters of the state.” In other words an exceedance of benchmarks simply triggers an evaluation of the current BMPs with the outcome of upgrading or replacing the BMPs. This iterative approach has been very ineffective in other regulatory programs such as the MS4 program. Due to the inclusion of infrequent reporting requirements and that the dischargers will be responsible for implementation of BMPs without reporting exceedances to the EO, it is highly unlikely that the requirement to upgrade BMPs will be enforced at all, let alone in a timely manner. An exceedance resulting in an iterative approach of increasing BMPs is tantamount to exceedance without risk of enforcement. Instead, the inclusion of numeric effluent limits is appropriate. Rather than merely establishing benchmarks for this waiver, the Regional Board has full authority to establish numeric limits, including for toxic constituents in water discharged from irrigated lands. Therefore, we believe that the “benchmarks” should be replaced with “limits”. At a minimum, TMDL</p>	<p>Board Basin Plan and pertinent state water quality control plans and policies and federal water quality criteria. Water Quality Benchmarks are the means of expressing the water quality objectives as in-stream water quality requirements in the Conditional Waiver. The enforceability of the Water Quality Benchmarks has been clarified by adding a parallel provision to Section E. Specific Provisions of the Tentative Order. The Water Quality Benchmarks (and the WQMP conditions triggered by benchmark exceedances) are enforceable. If dischargers do not comply with the conditions of the Order, they will be subject to enforcement. This is explained in section H of the Order.</p> <p>The use of Water Quality Benchmarks in the current and proposed waiver is an acceptable implementation method to attain water quality objectives and TMDLs. The State Water Resources Control Board (SWRCB) Policy for Implementation and Enforcement of the Nonpoint Source Pollution Control Program (NPS Enforcement Policy) states that all nonpoint source discharges must be regulated under waste discharge requirements (WDRs), waivers of WDRs, or Basin Plan prohibitions. Regional Boards may select the regulatory program most appropriate to address the nonpoint source discharge in question. In this case, a conditional waiver is the appropriate administrative tool to regulate discharges from irrigated lands for the reasons identified in Findings 39 and 40.</p>

Number	Date	Comment	Response
		<p>load allocations should be included as an actual limit and not a benchmark.</p> <p>It is of particular concern that this waiver attempts to implement TMDL load allocations through these unenforceable benchmarks. We believe this is inappropriate and contrary to current regulations. Water Code Section 13241 reads: “Each regional board shall establish such water quality objectives in water quality control plans as in its judgment will ensure the reasonable protection of beneficial uses and the prevention of nuisance....” It is both the law and good public policy for the Regional Board to include concrete numeric limits to ensure that waterways identified as impaired, including those impaired by pollution, are restored to health.</p>	<p>Furthermore, the Los Angeles Region Conditional Waiver for Irrigated Lands program was specifically developed to implement adopted TMDLs addressing agriculture nonpoint source discharges. In fact, the implementation sections of several TMDLs clearly identify the Conditional Waiver for Irrigated Lands as a key implementation mechanism for Load Allocations assigned to agriculture nonpoint source discharges.</p> <p>Regarding the applicability of Cal. Water Code section 13241, the proposed waiver does not establish new water quality objectives, but rather implements existing objectives through the use of Water Quality Benchmarks, and is thus not subject to California Water Code section 13241 requirements.</p>
3.5		<p><b>The Conditional Waiver should include clear enforcement actions.</b></p> <p>The Conditional Waiver should include clear enforcement actions. The State Board adopted Nonpoint Source Implementation and Enforcement Policy (“NPS Policy”) states: “Each RWQCB shall make clear, in advance, the potential consequences for failure to achieve an NPS control implementation program’s stated purposes” (NPS Policy at 14). The</p>	<p>Section H of the Order specifically addresses compliance and enforcement. Discharger noncompliance with this Order may result in enforcement actions including administrative civil liabilities (ACLs). Additionally as stated in section H of the Order, if a Discharger fails to meet the requirements and conditions of the Order, the Executive Officer may terminate the Discharger’s enrollment under Conditional Waiver and issue waste discharge requirements.</p>

Number	Date	Comment	Response
		<p>Conditional Waiver therefore must outline an enforcement plan for discharges who do not comply with the terms of the Conditional Waiver. Clear enforcement actions must be described in instances where benchmarks are continually not being met and also when new BMPs are not implemented when benchmarks are exceeded. How will the Regional Board ensure that the discharger implements additional management measures to protect the quality of waters of the state if benchmarks are not met? This needs to be clarified within the Waiver. In addition, the Conditional Waiver should state that if the discharger is out of compliance with conditions of the Waiver, the discharger must submit a ROWD and obtain coverage under individual WDRs within six months of the exceedance.</p>	<p>WQMP requirements (see Appendix 1) include reporting information on both existing and new or revised management practices that will be implemented to address Water Quality Benchmark exceedances. Additionally, the WQMP requires the tracking of management practice implementation and maintenance. These requirements provide the Regional Board with sufficient oversight of management practice implementation and will ensure that measures are in place to protect water quality. For example, if Dischargers do not comply with requirements, such as those described above, it would be grounds for enforcement under section H of the Order.</p>
3.6		<p><b>Dischargers from irrigated lands directly adjacent to 303(d)-listed waterbodies should not be allowed to fall under the Conditional Waiver.</b></p> <p>As acknowledged in the proposed Conditional Waiver, agriculture is a potential source of impairing pollutants to 303(d) listed waters in the region. Given this fact, any dischargers directly adjacent and, thus, highly likely to be a potential source of impairing contaminant(s) through discharges to receiving waters listed as impaired for those contaminant(s) (hereinafter “high-risk dischargers”) should not be eligible for coverage under the Conditional Waiver. Waiving WDR requirements for these high-risk dischargers could</p>	<p>The Los Angeles Region Conditional Waiver for Irrigated Lands program was specifically developed to implement TMDLs that address agriculture discharges to 303(d)-listed waterbodies. The TMDLs have already identified agriculture discharges as sources causing water quality impairments; so, there is no risk of failing to identify agriculture discharges as sources. Moreover, the implementation sections of several TMDLs clearly identify the Conditional Waiver for Irrigated Lands as a key implementation mechanism for agriculture nonpoint source discharges. Therefore, the TMDL load allocations have been incorporated into this Order as Water Quality Benchmarks. Thus, the Regional Board</p>

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		<p>undermine the effectiveness of the overall TMDL program in the region by failing to identify them as sources and failing to integrate requirements for meeting the Load Allocations set forth in the TMDLs. This problem is magnified further by the fact that there is nothing in the proposed Conditional Waiver to ensure that all agricultural dischargers meet load allocations under the TMDL program or otherwise coordinate with other dischargers regulated under applicable TMDLs.</p> <p>As a starting point, we strongly urge the Regional Board to have staff identify the high-risk dischargers and require them to submit an ROWD for the issuance of individual Waste Discharge requirements (“WDRs”) for these operations. These dischargers should not fall under the proposed Conditional Waiver at all. Finally, as discussed above, the Regional Board must require that the Monitoring and Reporting Plans (MRPs) developed by the dischargers include all 303(d) listed constituents for all applicable and relevant receiving waterbodies. This is the only way to ensure that the goals of the Conditional Waiver, the TMDL program, and indeed the CWA – to ensure the attainment and maintenance of water quality standards and beneficial uses – are truly met.</p>	<p>will ensure that load allocations are attained.</p> <p>TMDL load allocations are specifically included in the definition of Water Quality Benchmarks (finding # 15). Additionally, the following findings and provisions of the Conditional Waiver state that Water Quality Benchmarks must be attained:</p> <ul style="list-style-type: none"> <li>■ Finding 26</li> <li>■ Finding 52</li> <li>■ Section E, Provision 2</li> <li>■ Section H, Provision 3</li> </ul> <p>The Conditional Waiver is designed to result in attainment of Water Quality Benchmarks through progressive implementation of targeted BMPs. Compliance with Water Quality Benchmarks through progressive implementation of targeted BMPs is an enforceable condition of the waiver (see Section H Provision 3).</p> <p>See also response to comment 3.4 regarding the appropriateness of a Conditional Waiver for these types of discharges.</p>
3.7		<p><b>Benchmark exceedances should be reported to the Regional Board in a timely manner.</b></p> <p>The Conditional Waiver fails to require the dischargers to advise the Regional Board of a benchmark</p>	<p>In response to this comment, a reporting requirement was added to Appendix 1. Preliminary monitoring data, after QA/QC has been conducted, shall be submitted electronically to the Regional Board for review within 90 days of a monitoring event. This will ensure that</p>

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		<p>exceedance, they are merely documented for later inspection. The Conditional Waiver must make clear that its primary goal is to ensure compliance with all water quality objectives and maintenance of beneficial uses (NPS Policy at 11). The Conditional Waiver must also contain measurable milestones to ensure that progress is being made toward this goal (Id. at 13). The Regional Board must address these key NPS Plan elements. We therefore urge the Board to revise the Conditional Waiver to require dischargers to advise the Regional Board within five business days of the detection of any exceedances and to submit a follow-up report within 45 days of notification detailing corrective actions and additional monitoring results. These requirements are consistent with the language in the NPS Policy which states that “An NPS control implementation program shall include sufficient feedback mechanisms so that the RWQCB, dischargers, and the public can determine whether the program is achieving its stated purpose(s), or whether additional or different MPs or other actions are required” (NPS at 13). Prompt notification is critical to ensure that the Regional Board can prescribe all necessary accelerated monitoring or TIE work, as well as abatement in a timely fashion. If the Regional Board is not notified soon after the exceedance, the discharger may have already made changes such as the type of crop or pesticide in use, before the Regional Board could work with the discharger to identify the issue(s). It is especially important that the Regional Board receive timely information because the dischargers will likely need significant guidance on next steps.</p>	<p>preliminary data are reported in a timely manner and encourage dischargers to focus implementation efforts on a frequent basis.</p> <p>However, staff believes that the final data and summary of benchmark exceedances should be reported on an annual basis. The Conditional Wavier for Irrigated Lands program regulates discharges from 100,000 acres of irrigated agriculture. It is designed as a comprehensive program addressing a myriad of crops and operation practices. Because agriculture discharges are a nonpoint source discharge, the program is designed to assess diffuse sources of pollution, not evaluate individual discharge conditions, which is a program more applicable to point source discharges. The annual reporting frequency is appropriate because of the size of the area to be assessed and the objectives of this program. Staff expects improvements in water quality to be based on large-scale watershed-wide BMP implementation at multiple properties; the annual reporting frequency reflects the time needed to evaluate the cumulative effects of watershed-wide BMP implementation. This is a reasonable and effective approach to address nonpoint source discharges.</p> <p>The annual reporting frequency will not impede follow-up monitoring requirements, such as TIEs. Appendix 1 requires that during the field collection of samples an adequate volume of water to</p>

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		<p>Furthermore, the proposed MRR requires no schedule for immediate action once a benchmark is exceeded. The MRR must include specific additional requirements to be initiated immediately in the event an exceedance is observed. This conforms to the NPS Policy which states, “Where a RWQCB determines it is necessary to allow time to achieve water quality requirements, the NPS control implementation program shall include a specific time schedule, and corresponding quantifiable milestones designed to measure progress toward reaching the specified requirements” (NPS at 13).</p>	<p>conduct both toxicity tests and TIEs be collected from each monitoring site. Dischargers are required to immediately conduct a TIE based on the results of toxicity tests.</p> <p>The Order and Appendix 1 require the development of a WQMP within 6 months of a Water Quality Benchmark exceedance. The WQMP is required to include specific schedules and milestones to ensure progress and improvements in water quality. It should be noted that implementation actions are currently underway to address benchmark exceedances as part of the WQMP required by the previous waiver. To ensure that there is no lag between implementation under the previous waiver and implementation under the proposed waiver, Specific Provision E.3 has been revised to state that dischargers must implement the WQMP required by the previous waiver until the WQMP required by the proposed waiver is approved by the Executive Officer.</p> <p>This Order fully complies with the SWRCB NPS Enforcement Policy. This Order meets each key element of the policy.</p>
3.8		<p><b>The frequency of monitoring should be increased, and monitoring should take place under “worst-case-scenario” conditions.</b></p>	<p>Staff finds that the monitoring is suitably designed to characterize both wet- and dry-season conditions and reflect “worst-case-scenario” water quality conditions.</p>

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		<p>The frequency of monitoring should be increased in the MRPs in order to fully characterize discharges from irrigated lands. The MRPs require monitoring twice in the wet season and twice in the dry season. Monitoring should be conducted on a frequency that adequately characterizes water quality variability. Infrequent sampling can be problematic because of unknown variability in the systems. Therefore, it may be difficult to fully characterize discharger impacts under reduced monitoring efforts. Monitoring frequencies should reflect irrigation practices, crop cultivation, and weather conditions. If the discharger significantly changes a management practice such as the type of crop or pesticide(s) used, additional samples should be collected during the monitoring cycle in order to characterize the new discharge. In general, monitoring programs should be adaptive to any changes that occur during the lifecycle of the Conditional Waiver. Monitoring should take place at least once during the irrigation season of each crop and again in the wet season. If benchmarks are exceeded, the sampling frequency should increase until sources and impacts are identified and abated. Samples should be collected weekly upstream and downstream of the monitoring site that exceeded the benchmark and results should be submitted to the Regional Board for review.</p> <p>In addition, samples should be collected during the “worst-case-scenario” conditions, in order to adequately assess potential impacts. In other words, samples should be collected at a time and location where an exceedance has the most likelihood of being</p>	<p>The monitoring program is comprehensive and characterizes regionwide water quality conditions as related to agriculture discharges. Factors such as irrigation practices and weather conditions are considered as part of the monitoring program. For example, dry season monitoring events must take place after the majority of Dischargers have applied pesticides and fertilizers and must be during a period when irrigation is required. Wet-season samples are collected in conjunction with large storm events when it is expected that substantial amounts of sediment and pollutants may be transported to waterbodies.</p> <p>It is a goal of the Conditional Waiver for Irrigated Lands program to establish watershed-wide joint monitoring programs. Currently, 44 % of the irrigated agriculture land in Region 4 is monitored by this program. The monitoring frequency of 2 wet events and 2 dry events is sufficient to assess overall water quality conditions and evaluate trends. Additionally, there are aspects of agriculture operations that are outside Regional Board authority, such as changes in lease agreements and requirements of other regulatory agencies; therefore, staff finds it is not practicable to set monitoring frequencies based on unpredictable changes in agricultural operations. Instead, the monitoring program reflects typical agriculture practices in our Region.</p> <p>However, this Order does provide the Regional</p>

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		<p>observed. Specifically, the dry and wet weather testing should be conducted soon after irrigation following a relatively “intensive” pesticide application upstream from the monitoring location. Also, monitoring locations should be placed where there is minimal dilution by receiving waters.</p>	<p>Board Executive Officer the authority to modify monitoring requirements, if necessary, in response to a significant change in agricultural operations and/or practices (such that the current monitoring program was no longer effective) during the term of this Order.</p>
3.9		<p><b>303(d) Listed Pollutants</b></p> <p>Monitoring parameters also should include all pollutants on the 303(d) list for the receiving water and waterbodies downstream of the discharge, not just those for which TMDLs have been developed. The 2006 303(d) list identifies agriculture as a potential source of constituents that impair beneficial uses in several waters of the Region. Discharges from irrigated lands or “non-point sources” are frequently identified as pollutant sources and given load allocations in TMDL calculations. The proposed Conditional Waiver should require the monitoring of all 303(d) pollutants in a listed waterbody along with monitoring of tissue or sediment samples depending where the impairment exists; again it is unclear why the Draft Waiver fails to include this requirement. For instance, Calleguas Creek has numerous sediment and tissue impairments, including DDT in tissue and Endosulfan in tissue and sediment, which are not monitored under the Draft MRR. McGrath Lake is listed for chlordane,</p>	<p>This Order implements TMDL load allocations and requires monitoring to assess the attainment of load allocations as Water Quality Benchmarks. Tables 1 and 2 in Appendix 1 list the constituents and media for required monitoring. The Calleguas Creek Organochlorine Pesticides and PCBs TMDL assigned load allocations to agriculture to address the 303(d) listings for water column, sediment, and fish tissue impairments cited by the commenter. The Conditional Waiver correctly incorporates the load allocations assigned to agriculture and includes monitoring to assess compliance with the load allocations. In addition, extensive monitoring is taking place under the Calleguas Creek Coordinated Monitoring program; results from this monitoring will be reported in Conditional Waiver Annual Monitoring Reports and be used to evaluate water quality conditions.</p> <p>The load allocations for the McGrath Lake PCBs, Pesticides, and Sediment Toxicity TMDL were not included in this Order because the TMDL is not</p>

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		<p>DDT, dieldrin, fecal coliform, PCBs (Polychlorinated biphenyls), and sediment toxicity; yet Appendix 3 of the Conditional Waiver does not include any of these parameters. Of note, the Draft waiver does not contain any of the load allocations present in the TMDL for Pesticides, PCBs, and Sediment Toxicity for McGrath Lake. It is unclear why load allocations from this TMDL were omitted even though agriculture was found to be the main source of these impairments. In order to better characterize and evaluate load allocations for irrigated lands, monitoring for the 303(d) listed pollutants is absolutely necessary. The monitoring program cannot be effective if all constituents of concern are not included. In addition, monitoring programs should be adaptive – as new 303(d) lists are developed during the lifetime of the Conditional Waiver, or when new pesticides are applied, these constituents should be included as well. Consistent with TMDL implementation in the region, the MRPs must, at a minimum, obtain complete information about agricultural sources causing impairment. Otherwise, this program will undermine the entire TMDL process in areas impacted by irrigated agriculture.</p>	<p>effective as of yet. The TMDL was approved by the Regional Board, but must still be approved by SWRCB, the Office of Administrative Law, and US EPA. However, regardless of the TMDL status, the pollutants assigned load allocations in McGrath Lake PCBs, Pesticides, and Sediment Toxicity TMDL are pollutants required by the Conditional Waiver to be monitored on a region-wide basis. In other words, even though the McGrath Lake TMDL is not yet final and the load allocations are not yet incorporated into the Conditional Waiver, the Waiver already requires monitoring of DDT and dieldrin. Furthermore, the Executive Officer-approved MRP under the existing Waiver includes a monitoring site located in the agriculture discharge to McGrath Lake where sampling of DDT and dieldrin is already underway (see site OXD_CTR in the 2009 VCAILG annual monitoring report). The Executive Officer shall ensure that the MRP submitted under the revised Waiver includes this site as well. Finally, it should be noted that in anticipation of the development of the TMDL and based on exceedances of benchmarks, the agriculture area draining to McGrath Lake is named as a Tier I High Priority area for BMP implementation in the VCAILG 2008 WQMP.</p> <p>In response to this comment, staff reviewed all of the remaining 303(d) listings not yet addressed by a TMDL where agriculture is a potential source of the impairments. Staff also reviewed data from several other monitoring programs which assess</p>

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			<p>agricultural water quality, including data from an agricultural land use site in the MS4 monitoring program (site A-1), an agricultural land use site in the Calleguas Creek TMDL coordinated monitoring plan (site 04D_WOOD), and selected data submitted by Ventura Coastkeeper. Based on this review, staff has determined that agricultural discharges are a potential source of bacteria. Therefore, dischargers must conduct a bacteria special study to characterize discharges of bacteria from irrigated agriculture lands. This requirement has been added to the Draft Appendix 1.</p>
3.10		<p><b>Groundwater monitoring requirements should be added to the Draft MRR.</b></p> <p>Staff reasons that requiring groundwater monitoring is unnecessary because the extensive groundwater monitoring already happening throughout the region is adequate. However, these efforts were not adequately described in the MRR. We are concerned that these efforts may not be reliable over the course of the TMDL. The Regional Board needs to ensure that groundwater monitoring continues in perpetuity for this Conditional Waiver, regardless of what might happen with other monitoring. Thus, the MRR should include a comprehensive groundwater monitoring program to ensure there is an adequate base of information pertaining to groundwater quality. The program can include the existing groundwater monitoring program.</p>	<p>Staff disagrees. The existing groundwater monitoring efforts are described in the supporting document entitled “Review of Conditional Waiver Order R4-2005-0080 and Recommendation for Waiver Renewal.” Based on data from the SWRCB Groundwater Ambient Monitoring and Assessment (GAMA) Program, over 2,000 environmental monitoring and water supply wells were sampled in the Los Angeles Region in the last year. These data are readily accessible from the GAMA GeoTracker database. This database is online and available to the public.</p> <p><a href="http://www.swrcb.ca.gov/gama/geotracker_gama.shtml">http://www.swrcb.ca.gov/gama/geotracker_gama.shtml</a></p> <p>Additionally, Ventura County Watershed Protection District samples 150 groundwater wells annually. Staff finds this rigorous monitoring</p>

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		<p>The Conditional Waiver acknowledges that discharge from irrigated lands occurs to both surface and groundwater, and these discharges may impact the beneficial uses of groundwater when it states “Irrigated agriculture discharges can impact groundwater quality. A review of groundwater quality data in the Los Angeles Region reveals that groundwater is contaminated with pollutants, such as nitrate, contained in irrigated agriculture” (Conditional Waiver, Finding 32). Groundwater is known to resurface in surface waters in several river reaches within the Region. Therefore, in order to fully characterize impacts of discharges from irrigated lands, groundwater should also be monitored for the full set of parameters that have potential to reach groundwater.</p>	<p>program sufficient to assess groundwater quality within the Los Angeles Region. Thus, staff finds it is not necessary to require additional groundwater monitoring as part of this Order.</p> <p>However, the Order does recognize that agriculture discharges can impact groundwater quality and the Order regulates both surface water and groundwater discharges. This Order protects groundwater by requiring that Dischargers consider groundwater protection when identifying targeted BMPs for implementation. For example, irrigation efficiency BMPs prevent fertilizers from being pushed below the crop root zone and leached into groundwater. Additionally, nutrient management practices, such as leaf nutrient analysis can be used to ensure that crops are properly fertilized. At this time, staff finds that resources will be best directed to implementing BMPs to protect and improve groundwater quality rather than expanding an already extensive monitoring program.</p> <p>See also response to comment 3.8 regarding the Executive Officer’s authority to revise the monitoring program, if necessary.</p>
3.11		<p><b>Bioassessment monitoring requirements should be added to the Draft MRR.</b></p> <p>In addition to groundwater monitoring, we strongly urge the Regional Board to require the dischargers to</p>	<p>Staff finds that at this time individual bioassessment monitoring requirements are not needed because there is an ongoing regionwide bioassessment monitoring program. The regionwide bioassessment monitoring program is</p>

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		<p>identify species of concern in areas impacted by their discharges, such as the red-legged frog which is known to be found in the Santa Clara River Watershed, so as to determine the actual organisms in the systems that may be impacted by these discharges. Also, we encourage bioassessment of benthic invertebrate communities to more completely characterize the impacts on beneficial uses. Bioassessment monitoring of water-bodies within our region is critical to determine the health of and track improvement in the biological communities that exist in these waters. Again, the bioassessment programs under existing permit requirements can be part of bioassessment requirements.</p>	<p>organized by the Southern California Coastal Water Research Project (SCCWRP), the Stormwater Monitoring Coalition (SMC), and the SWRCB Surface Water Ambient Monitoring Program (SWAMP). This bioassessment monitoring program is a large-scale regional monitoring program assessing the overall biological health of southern California streams. This comprehensive monitoring program integrates many elements of individual monitoring programs and will ensure the use of regionwide quality assurance guidelines, which facilitates data comparability and data sharing. A comprehensive monitoring program avoids many of the major pitfalls of individual monitoring programs. For example, individual monitoring programs may have such differing sampling designs and techniques that the results are not comparable and a cumulative assessment of waterbody health is infeasible.</p> <p>Under the regionwide bioassessment monitoring program, monitoring is conducted in the six major Los Angeles Region watersheds.</p> <ul style="list-style-type: none"> <li>▪ San Gabriel River Watershed</li> <li>▪ Los Angeles River Watershed</li> <li>▪ Santa Monica Bay Watershed</li> <li>▪ Calleguas Creek Watershed</li> <li>▪ Santa Clara River Watershed</li> <li>▪ Ventura River Watershed</li> </ul>

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			<p>Criteria such as land use and stream order were used to identify the 6 monitoring sites for each watershed. Staff finds that this bioassessment monitoring is sufficient to assess the biological health of waterbodies in relation to agricultural discharges.</p> <p>In addition, a number of Publicly Owned Treatment Plants (POTWs) also have bioassessment monitoring requirements. All of these bioassessment data are reported to the Regional Board as part of SWAMP or in an Annual NPDES Monitoring Report. Staff will review these data and consider biological stream health when evaluating water quality conditions and the effectiveness of the Conditional Waiver.</p>
3.12		<p align="center"><b>COMMENTS ON THE TOTAL MAXIMUM DAILY LOAD FOR TOXAPHENE FOR THE SANTA CLARA RIVER ESTUARY</b></p> <p><b>The Draft TMDL should include a numeric target and load allocation for toxaphene in sediment</b></p> <p>It is concerning that this TMDL does not contain a numeric target for toxaphene in sediment given that toxaphene in sediment directly impacts fish tissue impairments. In fact, it is implied that toxaphene</p>	<p>Upon further research, staff did identify an available sediment quality guideline for toxaphene and the staff report has been revised to include a numeric target and load allocation for toxaphene in sediment. The target and load allocation is based on the TEL for toxaphene in marine sediment listed in the 2008 NOAA Screening Quick Reference Tables. The chlordane and dieldrin water column and fish tissue monitoring has been extended to include sediment monitoring as well. The sediment load allocation for toxaphene</p>

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		<p>concentration in sediment is the main driver for the fish tissue impairment in the Santa Clara River Estuary in the Staff Report when it states “It is anticipated erosion control from irrigated lands in the TMDL area, as implemented through the conditional waiver, will achieve load allocations from toxaphene and eliminate the impairment in fish tissue in the Estuary” (TMDL Staff Report Page 36). Thus it is illogical that there is no target and no load allocations for toxaphene in sediment. Without this target, this TMDL may not adequately address fish tissue impairment. The Staff Report states “If sediment monitoring finds ”hot spots“ with detectable toxaphene in the Estuary, then a load allocation to in situ sediment may be considered for this TMDL” (Staff Report Page 35). As we mention below, this TMDL does not require sediment monitoring. How will these hotspots be detected? We understand that there are no TECs or other consensus- based guidelines for toxaphene in freshwater sediment; however, we recommend that the Regional Board explore other potential criterion to develop a numeric target.</p>	<p>replaces the water load allocation for toxaphene in the publicly noticed draft TMDL. The chemical properties of toxaphene are such that it strongly binds to sediment particles; thus, a sediment load allocation is the best method to ensure attainment of the TMDL. This approach is consistent with previous TMDLs addressing toxic chemicals like toxaphene.</p>
3.13		<p><b>The monitoring program provided in the Draft TMDL is insufficient</b>  We are concerned with several aspects of the monitoring program included in the Draft TMDL for Toxaphene. Mainly, it lacks sediment monitoring, contains too few water quality monitoring locations, and contains fish tissue monitoring that is too infrequent and should instead occur on an annual</p>	<p>Sediment monitoring has been added in the revised staff report. There is now suspended sediment monitoring required in agricultural discharges to assess compliance with toxaphene load allocations and to detect potential contributions of chlordane and dieldrin.</p> <p>The frequency of water quality monitoring is considered adequate based on the limited number</p>

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		<p>basis. The TMDL requires water quality monitoring take place at one representative agricultural drain that discharges directly to the Estuary and one representative agricultural drain that discharges to the river upstream of the Estuary. How is a representative drain identified? All drains may be sources of toxaphene. Without more detailed monitoring, it will be nearly impossible to identify the agricultural source and implement necessary reduction mechanisms. Thus, the Regional Board should also include monitoring locations within the Estuary and at all significant agricultural drains. In addition, as touched upon above, our concern that the TMDL does not contain a numeric target for toxaphene in sediment is compounded by the fact that sediment monitoring is not included in the TMDL. Given Staff's presumption that sediment is the main driver for fish tissue impairment in the river, to neglect to monitor the Chem A suite in sediment is unreasonable and not protective of water quality. Sediment concentrations should be monitored for the purpose of comparison and to track progress in contaminant load reduction. The Draft TMDL mentions that the riverbed is mobilized at least once every once every two to three years on average. Thus we believe sediment monitoring should occur after major mobilization events. Also, fish tissue sampling should occur at higher frequency than every three years. With this major flushing occurring so frequently, we believe once every three years is not often enough to account for variability in pollutant loadings. Fish tissue monitoring should be performed once per year during the time of year the fish species is prone to accumulate</p>	<p>of agricultural drains draining to the SCR and Estuary in the TMDL area. Representative agricultural drains can be identified by analyzing, for example, historical land use, crop type, and pesticide applications. The representative agricultural drains will be subject to Executive Officer approval as part of the Conditional Waiver MRP. Please note that the staff report is revised to adjust the required locations of agricultural drains to be sampled to better represent the agricultural drains in the TMDL area.</p> <p>A frequency of once for every three years for fish tissue monitoring is considered adequate to monitor changes of toxaphene concentrations in fish tissue. Bioaccumulation of toxaphene occurs over long time periods in fish tissue and the proposed monitoring schedule is reflective of this process. The Board recently adopted a TMDL for Machado Lake for pesticides and PCBs which requires fish tissue monitoring every three years. In addition, EPA has recently noticed TMDLs for Los Angeles area lakes for pesticides and PCBs, which requires monitoring at least every three years.</p>

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		<p>the most contamination. This is usually the time frame right before spawning when fish need to consume the most food to store energy for the reproduction process. Also, as we explain below, the Regional Board should specify which species will be monitored.</p>	
3.14		<p><b>Regional Board should provide more detailed monitoring recommendations for fish tissue monitoring.</b></p> <p>We are concerned by the lack of detail provided in the monitoring recommendations for fish in this TMDL. Insufficient detail on monitoring protocols could put human health at risk. It is important for the Regional Board to specify which types of fish species are tested during compliance monitoring. We suggest looking at multiple species, particularly those that are most highly impacted by sediment contamination. Since the Santa Clara River is impaired for Chem A constituents, bottom-feeding fish should be chosen since they are most susceptible to acquire contamination from sediment. Regional Board should require monitoring of both bottom-feeding and water column-feeding for the purpose of comparison. In addition, the Regional Board should recommend that fish tissue testing is not limited to fish fillets, and should instead test whole fish, as certain parts of the fish are prone to accumulate different levels of contamination and many anglers, birds, and other consumers eat the entire fish.</p>	<p>Staff agrees that the required fish tissue monitoring must address factors such as:</p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Target species and size class</li> <li><input type="checkbox"/> Seasonal sampling</li> <li><input type="checkbox"/> Sample type (e.g. whole fish and skin on fillet).</li> </ul> <p>However, staff finds that it is a better approach to specify these requirements in the MRP documents. The document “U.S. EPA Guidance for Assessing Chemical Contaminant Data for Use in Fish Advisories: Volume 1 Fish Sampling and Analysis” provides detailed guidance on all of the factors listed above and concerns identified by the commenter, including requirements for the collection of bottom-feeding and water column-feeding fish. This guidance will be followed in the preparation, review, and approval of the MRP.</p>
3.15		<p><b>The Draft TMDL should include an explicit margin of safety (“MOS”)</b></p>	<p>The direct application of sediment numeric targets as load allocations and the direct incorporation of fish tissue targets as benchmarks in the</p>

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		<p>We believe the implicit margin of safety described in the TMDL Staff Report is inadequate to provide the buffer needed to ensure the targets are effective, and to account for non-conservative assumptions that might have been made during the calculation of this TMDL. Staff reasons that an implicit margin of safety is applied through the use of more protective numeric targets and by setting load allocations equal to water column targets. Using appropriate standards is required by law and is not in and of itself a margin of safety. We believe Staff must go further and apply an explicit 10% MOS to all of the load allocations in the TMDL, especially given that the load allocations are provided as benchmarks and not a limit. There are precedents for applying explicit margins of safety for load allocations. For instance, a 10% MOS was applied to LAs for the Machado Lake Pesticides and PCBs TMDL. Thus, including an explicit margin of safety would be consistent with these other TMDLs.</p>	<p>Conditional Waiver provides an implicit margin of safety. The explicit margin of safety in the Machado Lake TMDL was for the loading capacity of the lake sediments, which is not applicable to the Santa Clara River estuary.</p>
3.16		<p>In conclusion, we are supportive of certain aspects of the Draft Waiver, including the requirement to monitor pyrethroids and toxicity. However, the Regional Board should convert benchmarks to enforceable numeric limits, particularly for those derived from existing TMDL load allocations, exclude dischargers adjacent to impaired waters from being included in the waiver, and strengthen the Draft MRR and Draft TMDL as suggested above. We also request for the Regional Board to call for an information item to be brought before the Board one year from the adoption of this</p>	<p>Comment noted. Please see responses to specific comments above. As required by the Order, staff will periodically present information items to the Regional Board and evaluate the effectiveness of the Conditional Waiver for Irrigated Lands Program.</p>

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		waiver. The item should focus on the effectiveness of the waiver and its related programs, so that changes might be made to strengthen the waiver at that time if necessary.	
<b>4</b>	<b>Sept. 6, 2010</b>	<b>Ventura Coastkeeper</b>	
4.1		On behalf of the Wishtoyo Foundation's Ventura Coastkeeper Program ("VCK") and our 700 plus members who desire unpolluted water to recreate in, to sustain their livelihoods, for cultural uses, and to protect aquatic life and our ecological communities in Ventura County's inland and marine waters, we appreciate the opportunity to submit comments on the Draft Conditional Waiver of Waste Discharge Requirements for Discharges from Irrigated Lands within the Los Angeles Region and on the Draft Total Maximum Daily Load for Toxaphene for the Santa Clara Estuary ("Draft TMDL").	Comment noted.
4.2		The severely polluted discharges from Ventura County's agricultural lands continue to impair the water quality and ecological suitability of Ventura County's inland and coastal waterbodies. The water quality discharged from agricultural properties has not improved during the last 5 year term of the AG waiver, and the water quality monitoring results from Ventura County Agricultural Irrigated Lands Group ("VCAILG") have demonstrated that in many locations throughout Ventura County, the quality of the water discharged from irrigated lands is getting worse. The 2009 VCAILG Annual Monitoring Report indicates that in	Insufficient time has elapsed under the current term of the Conditional Waiver (Order No. R4-2005-0080) to evaluate the effect of the program on water quality or to make a determination that water quality is getting worse. The Conditional Waiver was adopted for five years. These five years were divided into two phases: (1) an administrative phase and (2) an implementation phase consisting of monitoring and BMP implementation. The implementation phase began in year two (2007) and water quality monitoring was conducted in 2007, 2008, 2009, and 2010.

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		<p>2008-2009, monitoring data from samples collected at 17 of 21 VCAILG monitoring sites draining agricultural landscapes exceed the AG Waiver's water quality benchmarks, which are not protective of water quality for species that depend on clean waterbodies to survive. In the Santa Clara River, Calleguas Creek, and Oxnard Coastal watersheds, AG waiver water quality benchmark exceedances ("exceedances") for Organochlorine Pesticides occurred at 17 of 21 sites, exceedances for Organophosphorus Pesticides occurred at 12 of 21 sites, 3 out of 5 sites exceeded the AG waiver's toxicity standards, and exceedances for Nitrate - N occurred at 10 of 21 sites.</p>	<p>Based on monitoring results, WQMPs were prepared and are currently being implemented. The initial VCAILG WQMP was approved by the Regional Board Executive Officer in February 2009. So far there has been very little time (~ 16 months) of strategic BMP implementation and water quality monitoring. Staff finds that it is simply too soon to make the broad determination that water quality is getting worse. Moreover, staff did not expect significant water quality improvements during the first term of the waiver because considerable time was provided for enrollment and initial water quality monitoring; only in the last year was BMP implementation initiated.</p> <p>Staff also finds that due to the intermittent nature of agriculture discharges and significant variability in discharge quantity and quality as a result of variable annual rainfall, it is technically inappropriate to characterize water quality as getting worse based on one year of monitoring data. The Conditional Waiver for Irrigated Lands monitoring program is designed to be comprehensive and cumulative and assesses trends in water quality over time. Simply reviewing a single year of data does not adequately or reasonably characterize water quality conditions.</p>
4.3		<p>VCK's Watershed Monitoring Program's data indicates that similar severe toxic discharges from Ventura County's irrigated lands threatens aquatic life and human health. For example, VCK found that a</p>	<p>Comment noted. The Order acknowledges the impact of agricultural discharges on water quality. The requirements and conditions of the proposed Waiver are intended to address these impacts.</p>

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		<p>persistent and continuing discharge from an agricultural field into Revolon Slough on September 25, 2009, just upstream of Las Posas (-119.07924444, 34.13171667) contained phosphorous at concentrations of .57mg/l and nitrate at concentrations above 259.6 mg/l. Furthermore, VCK's sampling from storm channels draining agricultural fields, such as the Oxnard Industrial Drain and Pleasant Valley Drain in the Ormond Beach watershed, have indicated that the concentrations of nutrients, concentrations of E-Coli, turbidity levels, pH levels, and amounts of trash in dry weather irrigation discharges from agricultural properties and in wet weather storm water runoff from agricultural properties continuously impairs the Ormond Beach Wetlands and Ventura County's coastal waters.</p> <p>VCK's overarching comment is that the improvements specified below need to be made to adequately protect water quality in accordance with the mandates of the Clean Water Act.</p>	See responses to specific comments below.
4.4		<p><b>Enforceable Water Quality Limitations</b></p> <p>The AG Waiver must incorporate enforceable water quality limitations that mandate compliance with clear and defined AG waiver water quality standards. Upon a violation of water quality limitations at monitoring locations, AG wavier enrollees must be subject to Mandatory Minimum Penalties (MMPs) and comply with the Water Quality Monitoring Plan as outlined</p>	Mandatory minimum penalties are required by California Water Code section 13385(h) and (i) for specified violations of NPDES permits. The agricultural dischargers covered by the proposed waiver are exempt from NPDES permit requirements. Under the Clean Water Act, irrigated agricultural return flows and agricultural storm water runoff are specifically excluded from NPDES permit requirements and are considered nonpoint sources. Nonpoint source pollution is regulated by

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		<p>below. In addition, in accordance with the monitoring requirements VCK suggests below, the individual parcel owners of irrigated lands with irrigation flows or stormwater discharges that violate AG waiver Water Quality Standards, must also be subject to Clean Water Act MMPs until the individual parcel owner sufficiently implements BMPs so that discharges from the parcel do not violate AG waiver water quality standards.</p> <p>Furthermore, to assist the Regional Board in enforcing the AG waiver, the Regional Board Executive officer should have the authority to authorize Non government organizations to perform BMP audits on individual irrigated land parcels (enrolled under the AG waiver) and edge of field discharge monitoring by government and NGO's upon request.</p>	<p>Porter Cologne. Porter Cologne provides administrative permitting authority in the form of WDRs, waivers of WDRs, and basin plan prohibitions to address ongoing and proposed waste discharges, including nonpoint sources. The proposed order to waive WDRs for discharges from irrigated lands complies with the requirements of Porter Cologne.</p> <p>The findings in the proposed Order and the supporting technical documentation support the decision to waive the requirements for WDRs for agricultural dischargers. According to CWC section 13269(a)(1), waivers must be consistent with the Basin Plan and in the public interest. The proposed waiver is consistent with the Basin Plan because it incorporates Basin Plan water quality objectives and implementation plans, including TMDL implementation plans, which specify the use of waivers to implement load allocations. The proposed waiver also includes conditions, including individual, group or watershed-based monitoring, in accordance with CWC section 13269(a)(2).</p> <p>The Executive Officer does not have the authority to authorize third parties to inspect or sample private property.</p>
4.5		<p><b>Water Quality Limitation / Standards Adequately Protective of Aquatic Life</b></p>	<p>The Water Quality Benchmarks in Appendix 2 and 3 of this Order are based upon adopted water quality objectives in the Basin Plan, US EPA</p>

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		<p>Regardless of the whether the water quality standards in the AG waiver are enforceable water quality limitations or benchmarks (Water Quality Standards”), the water quality standards must be sufficiently protective of aquatic life.</p> <p><b>Protective total Nitrogen and total Phosphorous Water Quality Standards, and Numeric Phosphorous Water Quality Standards</b></p> <p>In accordance with the Los Angeles Regional Water Quality Control Board’s Machado Lake TMDL and the Nutrient TMDL for Malibu Creek, adopted by USEPA in 2003, and considering that Mugu Lagoon, most of the Creek Watershed, and the Santa Clara River Estuary exhibit eutrophic conditions and are already 303(d) listed for nutrient impairment, AG Waiver numeric water quality standards must be set forth at 1 mg/l total nitrogen and .1 mg/l total phosphorous. In addition, it should be noted that the USEPA guidance value for CWA section 304(a) nutrient criteria specific to the Los Angeles Region (Ecoregion III) is 0.38 mg/l total nitrogen and 0.022 mg/l total phosphorus for protection of aquatic life and recreation.</p> <p>While, the Basin Plan’s water quality objective for nitrogen is that “Waters shall not exceed 10 mg/l nitrogen as nitrate-nitrogen plus nitrite-nitrogen, 45 mg/l as nitrate, 10 mg/l as nitrate-nitrogen, or 1 mg/l as nitrite-nitrogen or as otherwise designated in Table 3-8,” during the promulgation of the Machado Lake TMDL, the Regional Board determined that the Basin</p>	<p>established water quality criteria, such as the California Toxics Rule (CTR), and adopted TMDL load allocations. The applicable water quality objective for nitrogen and phosphorus compounds is the <i>Biostimulatory Substances</i> Basin Plan objective. The <i>Biostimulatory Substances</i> objective is a narrative objective. At this time, there are no adopted Regional Board or SWRCB criteria available to translate this narrative objective into a numeric objective on a regionwide basis. Staff agrees that a policy and criteria are needed to consistently translate the narrative <i>Biostimulatory Substances</i> objective into regionwide numeric objectives. Staff is currently engaged with the SWRCB and US EPA in development of this policy and/or criteria. However, even though there is not a numeric nutrient objective, the narrative <i>Biostimulatory Substances</i> objective is used to assess water quality conditions and is protective of beneficial uses and can be used to interpret numeric guidelines or indicators where available.</p> <p>TMDLs are water quality planning documents for individual waterbodies. The TMDL process includes significant technical work specific to the impaired waterbody. It is not technically defensible to generally apply numeric targets or load allocations developed for an individual waterbody on a regionwide basis.</p> <p>The Los Angeles Region Conditional Waiver for Irrigated Lands program was specifically</p>

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		<p>Plan's water quality objective for nitrogen as applied to aquatic life:</p> <p>“is not supportive of the narrative biostimulatory substance water quality objective. The nitrogen objective (10 mg/L) in the Basin Plan is based on criteria acceptable for drinking water and not appropriate to address eutrophic conditions in the lake. A review of available data and scientific literature demonstrates that the numeric objective of 10 mg/L for nitrogen is not sufficiently protective for controlling excessive algal/macrophyte growth and the symptoms of eutrophication in the lake. Therefore, the numeric target for total nitrogen will be more stringent than the existing numeric nitrogen objective in the Basin Plan to ensure attainment of the narrative biostimulatory substances water quality objective. The TMDL and its numeric targets must be developed to ensure protection of all the beneficial uses and attainment of nutrient related water quality objectives specified in the Basin Plan.”</p> <p>In addition, the Regional Board Staff, in its 2008 update of the Los Angeles Regional Integrated Report for Clean Water Act Section 305(b) Report and Section 303(d) List of Impaired Waters, verified its determinations in their comment for the Machado Lake TMDL by stating:</p> <p>“The Basin Plan contains a specific nitrogen (nitrate nitrite) water quality objective, which is</p>	<p>developed to implement adopted TMDLs addressing agriculture nonpoint source discharges. The implementation sections of several TMDLs clearly identify the Conditional Waiver for Irrigated Lands as an implementation mechanism for agriculture nonpoint source discharges. This Order implements the following nutrient TMDLs.</p> <ul style="list-style-type: none"> <li>■ Calleguas Creek Nitrogen Compounds and Related Effects TMDL</li> <li>■ Santa Clara River Nitrogen Compounds TMDL</li> <li>■ Malibu Creek Watershed Nutrients TMDL</li> </ul> <p>The load allocations from these TMDL are incorporated in this Order as Water Quality Benchmarks (see Appendix 3). The Conditional Waiver requires that Water Quality Benchmarks are attained through progressive implementation of BMPs.</p>

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		<p>established at 10 mg/L nitrogen as nitrate-nitrogen plus nitrite-nitrogen. This objective is specifically set to protect drinking water beneficial uses and is consistent with the California Department Public Health nitrate drinking water standard. This nitrogen water quality objective does not protect waterbodies from impairments related to biostimulatory substances and eutrophication.”</p> <p>VCK thus urges the Regional Board to adopt AG Waiver water quality standards of 1 mg/l total nitrogen and .1 mg/l total phosphorous, to cure the eutrophic conditions in Mugu Lagoon, the Santa Clara River Estuary, and throughout many other Ventura County waterbodies. In addition, VCK also would like to emphasize its request that that the Regional Board not only incorporates an numeric water quality standard for total phosphorous into the AG waiver as high phosphorous concentrations contained in the runoff from Ventura County irrigated lands causes and contribute to eutrophic conditions in Venture County Waterbodies.</p>	
4.6		<p><b>Trash Numeric Target</b></p> <p>Furthermore, VCK urges the Regional Board to incorporate the numeric limit for trash of zero pieces of trash, as set forth in the Los Angeles River Trash TMDL. VCK’s watershed monitoring program observes and records hundreds of pieces of plastic tarps and discarded water bottles from agricultural operations lining agricultural drainages, and thus feels that trash</p>	<p>Trash pollution prevention is addressed by this Order through trash monitoring and the implementation of BMPs.</p>

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4.7		<p data-bbox="510 277 1226 342">pollution prevention should be addressed by the AG waiver through enforceable water quality standards.</p> <p data-bbox="510 347 1129 380"><b>Pyrethroid Numeric Water Quality Standards</b></p> <p data-bbox="510 412 1226 542">VCK also insists that the Regional Board to adopt numeric water quality standards for the AG Waiver that are protective of aquatic life, including the Southern California Steelhead.</p>	<p data-bbox="1255 347 1911 678">Staff recognizes the risks that pyrethroid pesticides present to water quality. Therefore, this Order requires monitoring for pyrethroids and staff is closely tracking these results. At this time, numeric pyrethroid water quality objectives have not been developed. However, the Basin Plan does contain narrative water quality objectives for <i>Pesticides</i> and <i>Toxicity</i>. These objectives are used to ensure that aquatic life is protected from the discharge of pyrethroid pesticides.</p> <p data-bbox="1255 716 1902 878">The development of a new numeric water quality objective is a separate regulatory action and must be conducted according to Clean Water Act section 303(c) and Cal. Water Code sections 13240 and 13241.</p>
4.8		<p data-bbox="510 948 804 980"><b>Improved Monitoring</b></p> <p data-bbox="510 1018 1209 1148">The AG Waiver's water quality monitoring requirements are insufficient to adequately protect Ventura County's waterbodies from polluted discharges from agricultural properties/irrigated lands.</p> <p data-bbox="510 1185 968 1218"><b>Insufficient Monitoring Coverage</b></p> <p data-bbox="510 1255 1226 1349">No monitoring locations are located in the Ormond Beach Watershed. In addition, the Santa Clara River main stem, which is lined from Highway 101 to Santa</p>	<p data-bbox="1255 915 1911 1247">Staff disagrees; the monitoring program is comprehensive and characterizes both wet- and dry-season conditions. In Ventura County, there is a monitoring site at the bottom of all drainage areas with significant irrigated agriculture land (See VCAILG 2009 Annual Report figures 8, 9, and 10). Additionally, there is separate TMDL monitoring at the base of each impaired subwatershed, which ensures all discharges are monitored.</p> <p data-bbox="1255 1284 1902 1349">Staff expects Dischargers to submit revised MRPs for review and Executive Officer approval by April</p>

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		<p>Clarita with agricultural properties, lacks sufficient monitoring locations from irrigation channel outfalls into the Santa Clara River.</p> <p>Specifically, VCK request that monitoring locations are added</p> <p>1.) at the Oxnard Industrial Drain, just below its confluence with the Pleasant Valley Drain confluence;</p> <p>2.) at additional irrigation channel outfalls into the Santa Clara River</p> <p>a.) in between the Sespe Creek and Santa Paula Creek confluences with the Santa Clara River ;</p> <p>b.) in between the Santa Clara River Estuary and highway 101 in the irrigation channels on both the north and south sides of the Santa Clara River that drain primarily strawberry fields;</p> <p>c.) in the irrigation channel outfalls just upstream of Highway 101; and d.) upstream of the Santa Clara River's confluence with the Sespe Creek before the Santa Clara River's confluence with Piru Creek.</p>	<p>2011 (Order section G, Schedule). Requests for the addition of specific monitoring locations will be considered at that time.</p>
4.9		<p><b>Dissolved Oxygen Monitoring Requirement</b></p> <p>VCK also specifically requests the Regional Board incorporates into the AG waiver a pre-dawn dissolved oxygen monitoring requirement measuring Dissolved Oxygen ("DO") in mg/l. Pre-dawn DO monitoring must be required by the Board because waterbodies exhibiting DO impairments typically exhibit DO impairments before sunshine drives aquatic plants to produce DO via photosynthesis.</p>	<p>This Order does require dissolved oxygen monitoring. The required monitoring is suitable to determine compliance or noncompliance with the Basin Plan dissolved oxygen water quality objective. Pre-dawn dissolved oxygen monitoring would provide information on diurnal swings in dissolved oxygen concentrations. The timing for measuring dissolved oxygen will be considered in the Executive Officer approval of the MRP.</p>
4.10		<p><b>Monitoring from Individual Irrigation and</b></p>	<p>This Order does require follow-up monitoring as</p>

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		<p><b>Stormwater Discharges from Irrigated Lands</b></p> <p>When ambient water quality monitoring results from AG waiver monitoring locations detect exceedances of AG waiver water quality standards, the AG waiver must mandate irrigation and stormwater discharge “edge of field or discharge point” monitoring from all of the individual irrigated and agricultural properties upstream of the monitoring location. The results of the monitoring from the irrigation and stormwater discharges (location included) from all of the individual irrigated and agricultural properties upstream of the monitoring location must be included in the Water Quality Monitoring Report to the Regional Board and be made available to the public.</p>	<p>part of the WQMP. Follow-up monitoring may include edge of field monitoring or other investigative monitoring, as needed to identify the nature and source of Water Quality Benchmark exceedances. Follow-up monitoring may be proposed as a revision to the MRP and is subject to Executive Officer approval.</p>
4.11		<p><b>Groundwater Monitoring</b></p> <p>VCK also requests that groundwater monitoring is conducted by AG Waiver enrollees to ensure sufficient BMPs are being implemented to prevent the contamination of ground water from agricultural activities.</p>	<p>See response to comment 3.10.</p>
4.12		<p><b>Improved Reporting</b></p> <p>Aside from the submission of an Annual monitoring report, VCK requests that within 2 months from the detection of exceedances of AG Waiver water quality standards and the completion of “edge of field or discharge point” monitoring from all the individual irrigated and agricultural lands upstream of the of the monitoring stations where the exceedance of water quality standards was detected, that individual</p>	<p>Staff disagrees. The Conditional Waiver for Irrigated Lands program regulates discharges from 100,000 acres of irrigated agriculture. It is designed as a comprehensive program addressing a myriad of crops and operation practices. Currently, there are more than 1,600 landowners and/or growers enrolled under this program. The timeframe of six months for the development of a WQMP is appropriate because of the large area</p>

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		<p>dischargers or discharge groups submit a Water Quality Monitoring Plan.</p> <p>In addition, VCK request that not that the Water Quality Monitoring Plans are made public, but VCK also request that the Regional Board grants the public access to its databases of irrigated lands that contain specific farm plots, the types of pesticides applied to those lands, the types of crops grown on each plot, the edge of field or discharge point monitoring results from those plots produced from the Water Quality Monitoring Plan, and the BMPs implemented by particular plots.</p>	<p>addressed and the detailed information needed to accurately document BMP implementation.</p> <p>The Regional Board does have some of the information requested in this comment. All Regional Board information is available upon request.</p>
4.13		<p><b>Improvements to the Water Quality Monitoring Plan (“WQMP”)</b> The WQMPs must be improved to:</p> <p>1) require the disclosure the results of “edge of field or discharge point” monitoring from all the irrigated or agricultural lands upstream of where AG Waiver monitoring demonstrates exceedances of AG waiver water quality standards</p> <p>2 ) require the proposal and implementation (and after approval by the Board Executive Officer (“EO”) ) of BMPs that will be implemented on specific irrigated lands or agricultural fields where “edge of field or discharge point” AG Waiver monitoring demonstrates an irrigation flow or stormwater discharge exceeds AG waiver water quality standards. This requirement would</p>	<p>Staff finds that the WQMP requirements already address the suggested improvements (See Appendix 1, pages 7-9).</p> <p>The WQMP may include edge of field monitoring or other investigative monitoring, as needed, to identify the nature and source of Water Quality Benchmark exceedances. Follow-up monitoring may be proposed as a revision to the MRP and is subject to Executive Officer approval. Additionally, WQMP requirements include reporting information on both existing and new or revised management practices that will be implemented to address water quality impairments. The WQMP also requires the tracking of management practice implementation and maintenance. These requirements provide the Regional Board with</p>

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		<p>entail that photographs documenting existing BMPs are submitted to the EO, and that plan for additional BMPs, with parcel maps incorporating the new BMPs, will be submitted to the EO.</p> <p>3) Require follow up water quality monitoring and reporting of BMP implementation from specific irrigated lands or agricultural fields where “edge of field or discharge point” AG Waiver monitoring demonstrates an irrigation flow or stormwater discharge exceeds AG waiver water quality standards.</p> <p>In addition, the WQMP must mandate the implementation of physical BMPs that improve water quality. While selecting appropriate BMPs to prevent irrigated and stormwater flows from violating AG Waiver water quality standards, the owner of the irrigated land can seek free education and planning assistance from the NRCS or UC Davis.</p>	<p>sufficient oversight of management practice implementation and will ensure that measures are in place to protect water quality.</p> <p>Staff disagrees that the WQMP must mandate the implementation of physical BMPs. Under the proposed program, dischargers must specify the types of BMPs that they will implement to address Water Quality Benchmark exceedances. It is likely that these will include physical BMPs, source control BMPs, or a combination of both. It should be noted that source control BMPs are an effective and proactive measure to address agriculture discharges. For example, irrigation efficiency BMPs prevent fertilizers from being pushed below the crop root zone and leached into groundwater. Additionally, nutrient management practices such as leaf nutrient analysis can be used to ensure that crops are fertilized in the proper amount.</p>
4.14		<p><b>Santa Clara River Toxaphene TMDL / Incorporating TMDL’s into the AG Waiver</b></p> <p>VCK insists that all TMDLs, and their accompanying Waste Load Allocations, that are incorporated into the AG waiver contain enforceable effluent limitations to insure compliance and thus effectiveness of the TMDLs in protecting water quality.</p>	See response to comment 3.4.
4.15		<p><b>Opening the AG Waiver As an Information Item in November, 2011</b></p> <p>In addition, VCK also urges the Regional Board (“Board”), along with the adoption of the AG Waiver</p>	As required by the Order the staff will periodically present information items to the Regional Board and evaluate the effectiveness of the Conditional Waiver for Irrigated Lands Program.

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		<p>with the improvements VCK suggests, to schedule a hearing to bring the AG Waiver back before the Board in a year (November, 2011) as an informational item to report on the effectiveness of the AG waiver in improving water quality discharged from agricultural properties/irrigated lands. Within the next year, Ventura County irrigated lands upstream of VCALIG's Tier 1 priority monitoring sites are scheduled to implement BMPs to improve water quality discharged from their properties. VCK is adamant that in or around November 2011 the Regional Board officially review the water quality results from the Tier 1 priority sites as an Informational Item to gauge the effectiveness of the AG Waiver, and to make a determination as to whether the AG Waiver must be re-opened and strengthened to protect our waterbodies and their already endangered species.</p>	
<b>5</b>	<b>Sept. 7, 2010</b>	<b>US EPA, Region 9</b>	
5.1		<p>The U.S. Environmental Protection Agency (EPA) appreciates the opportunity to comment on the proposed Toxaphene TMDLs for Santa Clara River Estuary. We support the TMDL and commend your effort to streamline the process and implement the TMDL as a single regulatory action in the proposed renewal of the Conditional Waiver for irrigated lands. This approach enables the Regional Board to adopt TMDLs and meet California's TMDL commitments, which will enable EPA to meet its requirements under the consent decree (<i>Heal the Bay V. Browner, C. 98-</i></p>	Comment Noted.

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		<i>48 25 SBA, March 22, 1999).</i>	
5.2		EPA has reviewed the proposed draft and finds the TMDL meets all regulatory requirements. This TMDL provides all the necessary elements of a TMDL, including applicable numeric targets based on the California Toxics Rule (CTR) criteria, numeric allocations, consideration of seasonal variations and a margin of safety.	Comment Noted.
5.3		Since discharges from agricultural lands are the only source of toxaphene to fish tissue in the Santa Clara River Estuary, the implementation of this TMDL via a single regulatory action through the Conditional Waiver is a reasonable approach to address the impairments. The document, "Water Quality Control Policy for Addressing Impaired Waters: Regulatory Structure and Options", clearly described there is no legal requirement to adopt the TMDL through a basin plan amendment, and an implementation plan can be adopted in a single regulatory action, such as a permit, waiver, or an enforcement order (State Board, 2005). Furthermore, we believe the inclusion of the TMDL as part of the Conditional Waiver leads to a more efficient means of immediately addressing the impairments by identifying the numeric targets and the monitoring necessary to show compliance with load allocations and targets, as required in the Waiver.	Comment Noted.
5.4		Overall, EPA finds the proposed TMDL provide reasonable scientific analysis for addressing toxaphene in the water column, sediment and fish tissue. We find the concentration-based load allocations established in the TMDLs for discharges from agricultural lands are consistent with EPA	Comment Noted. A sediment numeric target, load allocation, and monitoring for toxaphene have been added in the revised staff report. The sediment load allocation for toxaphene replaces the water load allocation for toxaphene in the publicly noticed draft TMDL. The chemical

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		<p>guidance and other similar TMDLs adopted in the state. We understand that past data records have shown non-detects in the sediment samples for toxaphene and this TMDL does not include sediment allocations. However, we believe continued sediment monitoring is important and support the TMDL and the Conditional Waiver's enforceable monitoring requirement to collect and evaluate sediment data for "hot spots", whereby detectable toxaphene levels would lead to appropriate load allocations for sediment.</p>	<p>properties of toxaphene are such that it strongly binds to sediment particles; thus, a sediment load allocation is the best method to ensure attainment of the TMDL. This approach is consistent with previous TMDLs addressing toxic chemicals like toxaphene.</p> <p>Sediment monitoring has been added in the revised staff report. There is now suspended sediment monitoring required in agricultural discharges to assess compliance with toxaphene load allocations and to detect potential contributions of chlordane and dieldrin.</p>
5.5		<p>We commend your hard work on these TMDLs and strongly recommend adoption by the Regional Board.</p>	<p>Comment Noted.</p>
<b>6</b>	<b>August 17, 2010</b>	<p><b>Dan Detmer, United Water Conservation District</b></p>	
6.1		<p>I was looking at the proposed Toxaphene TMDL and noticed the SCR watershed map for below Freeman Diversion excluded Todd Barranca. The Barranca meets the SCR immediately below Freeman, so it should be included on your map of the lower watershed.</p>	<p>The TMDL area map and land use data in the staff report have been revised to include Todd Barranca in the TMDL area.</p>